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FISCAL IMPACT STATEMENT

LS 6160

BILL NUMBER: HB 1037

NOTE PREPARED: Nov 16, 2007

BILL AMENDED:

SUBJECT: Proof of Withholding Exemptions.

FIRST AUTHOR: Rep. Ulmer

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill requires an employer to verify that an employee is entitled to claim adjusted gross income tax withholding exemptions for more than two individuals. It provides that unless an employer knows an employee's representations are false, the requirement for an employer to verify any additional withholding exemptions claimed by an employee is met if the employer obtains for each additional individual for whom the employee claims a withholding exemption a copy of any document specified in the statute, including a driver's license or Social Security card.

The bill provides that an employer's failure to verify an employee's additional withholding exemptions as required is a Class A misdemeanor. It also provides that an employee's submission of a false or fictitious document to an employer for the purpose of claiming more withholding exemptions than the employee is entitled to claim is a Class A misdemeanor.

Effective Date: January 1, 2009.

Explanation of State Expenditures: *Summary:* The Department of State Revenue (DOR) could potentially incur additional administrative cost to implement and enforce the proposed requirements for employers to verify certain withholding exemptions claimed by employees. However, the precise fiscal impact of this provision is indeterminable. The funds and resources that may be required for the DOR to implement and enforce the withholding exemption verification requirements could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements

of this bill will depend upon legislative and administrative actions. The state vacant position report for November 13, 2007, indicates that the DOR has 362 vacant full-time positions.

Background Information: The bill requires an employer who is required to withhold state income tax and local option income tax to verify that employees who claim more than two exemptions are entitled to the exemptions in excess of two. Generally, current statute requires employers to withhold state income tax and local option income tax on wage payments made to employees if the wage payments are taxable and the employer is required to withhold federal income tax on these wage payments. The bill specifies that the verification requirement is met by the employer if the employer obtains from the employee a copy of one of the following for each of the additional exemptions the employee claims:

- (1) A birth certificate.
- (2) A Social Security card.
- (3) A marriage license.
- (4) A driver's license or state-issued identification card.
- (5) A federal document establishing lawful permanent residence or naturalization.
- (6) A passport.
- (7) A court order establishing paternity.

Explanation of State Revenues: The bill creates penalties for employers and employees who violate the withholding exemption verification provisions.

(1) An employer commits a Class A misdemeanor if the employer knowingly pays wages to an employee who has claimed more than two withholding exemptions, fails to meet the verification requirements relating to the additional exemptions, accepts a false or fictitious document to meet the verification requirements, and withholds less income tax than required by the withholding instructions of the DOR.

(2) An employee commits a Class A misdemeanor if the employee knowingly furnishes to an employer false documentation in order to claim more withholding exemptions than the employee is entitled to claim.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public defense administration fee (\$3), court administration fee (\$3), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures: A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement

agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Department of Revenue.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

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